

The manufacturing machinery and equipment exemption is available for machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. (This is a GIL.)

November 9, 2004

Dear Xxxxx:

This letter is in response to your letter dated April 30, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I recently spoke with a Marie in the Sales Tax Legal Office. I asked her how I go about writing a General Information Letter to obtain written answers to my sales and use tax questions.

She gave me your name and the above address to send the questions to.

Please find the questions attached. If you have any questions regarding the attached, please feel free to call me at the above number. Please send the answers to my attention to the above address.

Question 1:

We are a producer of limestone. We have a kiln that is directly used in producing product for sale by heat-treating the limestone during the process. A coal mill fuels the kiln. The coal mill is fed with coal by loaders that load the coal onto conveyors. The conveyors then feed the coal into the coal mill. Are the loaders that load the coal onto the conveyors and the conveyors that feed the coal into the coal mill exempt or taxable? Please provide an answer for purchases prior to and post 7/1/03 law change.

Question 2:

We are a producer of limestone. We have kilns that treat the limestone during the process. Is a kiln camera that is used to look into the kiln to make sure everything is working properly considered part of the kiln and part of the production process and therefore exempt from tax?

Question 3:

Air compressors are used to power the repair and maintenance equipment and tools that are used to repair and maintain the production equipment. The production equipment is used directly in producing product for sale to customers. Are air compressors that are used to power the repair and maintenance equipment and tools that are used to repair and maintain the production equipment taxable or exempt?

Question 4:

When buying exempt production equipment, is the freight/delivery charge to deliver that equipment exempt as well?

DEPARTMENT'S RESPONSE:

We are unable in the context of a general information letter to provide you with a ruling regarding specific equipment discussed in your request. As stated above, general information letters are intended to direct a taxpayer to the resources necessary to enable a taxpayer to make determinations regarding tax liability. The following general guidelines may be helpful to you in making a determination of the appropriate tax liabilities. If you want a determination by the Department whether a specific piece of equipment or machinery qualifies for exemption, you will need to request a Private Letter Ruling.

Machinery and equipment that is used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.330. The exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation. It is important to note that the product being produced must be for sale or lease for the manufacturing machinery and equipment exemption to apply.

The law exempts only the purchase and use of "machinery" and "equipment" used in manufacturing or assembling. Machinery means major mechanical machines or major components of such machines contributing to a manufacturing or assembling process; including, machinery and equipment used in the general maintenance or repair of such exempt machinery and equipment. See 86 Ill. Adm. Code 130.330(c)(1) and 130.330(c)(2). Regulation 86 Ill. Adm. Code 130.330, was amended April 1, 2002, to reflect the inclusion of chemicals and the expanded CAD/CAM provisions in the manufacturing machinery and equipment exemption.

For example, the following uses of machinery and equipment will generally be considered an exempt use:

- a) To effect a direct and immediate physical change upon the tangible personal property to be sold;
- b) To guide or measure a direct and immediate physical change upon the tangible personal property to be sold;
- c) To inspect, test or measure the tangible personal property to be sold where such function is an integral part of the production flow;

- d) To convey, handle or transport the tangible personal property to be sold within production stations or directly between production stations;
- e) To place the tangible personal property to be sold into the container, package or wrapping in which the property is normally sold.

Machinery and equipment may qualify for the exemption where it is used to inspect, test, or measure the tangible personal property to be sold where such function is an integral part of the production flow. See part (d)(3)(C) of Section 130.330. Machinery and equipment that is used to conduct testing prior to, or after completion of, the manufacturing process is not used as an integral part of the production flows and does not qualify for the exemption.

If equipment is used primarily by a manufacturer to test the products being produced, and the results of those tests are used to adjust the production in progress, that equipment may qualify as exempt manufacturing machinery and equipment. For example, equipment used primarily by a manufacturer to test the alloy content of molten metal can qualify for the exemption when the results of those tests are used to determine if additional alloy is needed prior to cooling of the metal as part of the production of tangible personal property.

Generally, equipment used to power the repair and maintenance equipment, certain tools (excluding hand tools), and the maintenance equipment itself, would enjoy the manufacturing machinery and equipment exemption. Note, the exemption does not include hand tools, supplies (such as rags, sweeping or cleaning compounds), coolants, lubricants, adhesives, or solvents, items of personal apparel (such as gloves, shoes, glasses, goggles, coveralls, aprons, masks), coal, fuel oil, electricity, gas, or water. See 86 Ill. Adm. Code 130.330(c)(3).

Please see the Department's regulation on treatment of transportation and delivery charges under the Retailers' Occupation Tax Act. 86 Ill. Adm. Code 130.415. If the item being delivered is not subject to tax, then the transportation and shipping charges for that item are not subject to tax.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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